

October 20, 2011

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service
WC Docket No. 05-337; CC Docket No. 96-45;
GN Docket No. 09-51; WC Docket No. 06-122
CC Docket No. 01-92**

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, I am providing you with notice of two *ex parte* communications made in connection with the above-captioned proceedings.

On October 18, 2011, on behalf of Cellular Properties, Inc. d/b/a Cellular One of East Central Illinois ("Cellular One of East Central Illinois") and Nex-Tech Wireless, LLC ("Nex-Tech Wireless") (collectively, the "Carriers"), I spoke by phone with Margaret McCarthy, Policy Advisor in the Office of Commissioner Michael Copps, about the provision of special consideration for small carriers as the Commission reforms the Universal Service Fund ("USF"), particularly given the information provided to the Commission regarding the detrimental impact that the agency's proposed USF reforms would specifically have on small carriers, including the Carriers.

On October 20, 2011, I communicated by e-mail with Ms. McCarthy regarding the attached set of proposed rules that, if adopted, would ensure that a sufficient amount of USF high-cost support remains available to small carriers and the rural communities they serve.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/

Gwendolyn O'Brien Donaldson
President

*Consultant to Cellular Properties, Inc. d/b/a Cellular
One of East Central Illinois and Nex-Tech Wireless,
LLC*

Attachment

cc: Margaret McCarthy (via e-mail)
Angela Kronenberg (via e-mail)

PROPOSED RULE TO PROVIDE SMALL BUSINESS EXEMPTION

Funding Pursuant to Part 54 Connect America Fund Provisions for Service Providers Qualifying as Small Carriers

Proposed Rule

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE

* * *

[New] Subpart M – Connect America Fund for Rural Rate of Return Carriers and Small Carriers*

* * *

§ 54.1106 CAF Support for Small Carriers.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

- (1) *Competitive eligible telecommunications carrier.* A “competitive eligible telecommunications carrier” is a carrier that meets the definition of an “eligible telecommunications carrier” and does not meet the definition of an “incumbent local exchange carrier” in § 51.5 of this chapter.
- (2) *Eligible telecommunications carrier.* “Eligible telecommunications carrier” means a carrier designated as such by a state commission pursuant to § 54.201.

* The proposed § 54.1106 has been prepared as a revision to the working discussion draft of proposed rules to implement the universal service fund and intercarrier compensation components of the reform plan set forth by the National Exchange Carrier Association, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (collectively, “Rural Associations”). See Letter from Michael R. Romano, Senior Vice President – Policy, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, Oct. 5, 2011, Enclosure (“Rule Changes for RLEC USF & ICC Reform, Discussion Draft – 10/5/11”). Subpart M of Part 54 is proposed in the Rural Associations’ working discussion draft of proposed rules.

- (3) *Incumbent local exchange carrier*. “Incumbent local exchange carrier” has the same meaning as that term is defined in § 51.5 of this chapter.
- (4) *Small carrier*. “Small carrier” means any eligible telecommunications carrier, including any competitive eligible telecommunications carrier:
 - (i) whose average number of employees (including the employees of its domestic and foreign affiliates) for each of the pay periods for the annual period ending December 31, 2011, is less than 1,500; and
 - (ii) that was designated as an eligible telecommunications carrier prior to July 1, 2012.

For purposes of this paragraph (4), the number of employees shall be calculated in accordance with the provisions of 13 C.F.R. § 121.106, as amended from time to time, to the extent those provisions are consistent with the terms of this paragraph (4).

(b) *Eligibility for Support*. Notwithstanding any other provision of this Part 54 relating to the calculation or disbursement of support, any small carrier shall be eligible to receive Connect America Fund (CAF) support as specified in this section. Such support shall be available to a small carrier pursuant to this section notwithstanding whether broadband services provided by such small carrier meet any threshold broadband speed requirements otherwise applicable to recipients of CAF support.

(c)(1) *Calculation of Small Carrier Support*. Any small carrier may receive CAF support, or any other high-cost support available to eligible telecommunications carriers pursuant to this Part 54, in an amount not less than the product of:

- (i) the per-line level of support received by the small carrier on December 31, 2011; and
- (ii) the number of subscriber lines served by the small carrier.

(2) Any small carrier shall continue to be eligible to receive support calculated pursuant to paragraph (c)(1) of this section, and shall not be subject to any other support calculation or disbursement requirements or provisions otherwise applicable to eligible telecommunications carriers pursuant to this Part 54 or otherwise, to the extent that such small carrier continues to comply with the requirements of § 54.201 of this chapter.

Explanation

The targeted CAF funding provisions reflected in proposed § 54.1106 are necessary and justified because, without them, many small rural carriers will be severely restricted in their efforts to continue to provide telecommunications service, and to deploy advanced broadband ser-

vices, in their service areas. In the case of wireless carriers, the cap on competitive ETC funding imposed by the Commission in 2008 continues to place great stress on the operation of existing rural networks. USF funding has been reduced by more than 50 percent in some areas, forcing employee lay-offs and the turn-down of cellular tower operations. Such information has recently been filed with the Commission. Many rural carriers face shrinking revenue streams that are hindering their ability to compete and to deliver quality services to their customers.

In these circumstances, any phase-out of existing funding, or overall reduction in funding, would deal a crippling blow to small rural carriers currently receiving support. Such a funding phase-out or reduction in funding would likely drive a number of these carriers out of business. If existing USF support is further reduced, these small carriers will be further hindered in their efforts to make the leap to 4G networks, the deployment of which is critical in bringing advanced broadband services to rural consumers. This problem is critical because the network costs associated with 4G upgrades are becoming increasingly unmanageable for small rural carriers.

The proposed § 54.1106 offers a reasonable and calibrated solution that would preserve and advance the capability of small carriers to provide service—including broadband service—to their rural customers:

- Exempting small carriers from any phase-down or ongoing reduction of existing funding, and from any onerous fund disbursement mechanisms, would ease pressures on these carriers, enabling them to stay in business, to provide competitive options in their service areas, and to deliver quality services to their customers.

- For example, imposing a reverse auction funding mechanism on small carriers would have a devastating effect. These carriers operate in high-cost markets, and they have small subscribership levels, making it virtually impossible for them to spread costs to offer the lowest price. In addition, small carriers lack the financial and other resources that would enable them to compete effectively in a reverse auction process.

- The proposed rule exempts small carriers from a 4 Mbps broadband standard because many small wireless carriers would not be able to meet this standard and thus would not qualify for any CAF support.

- There is Commission precedent for tailoring FCC requirements to accommodate the unique needs and concerns of small carriers. For example, the Commission, in its E911 decisions, ameliorated market disparities between smaller and larger carriers through the provision of longer implementation schedules for smaller carriers than for larger carriers. In addition, the Commission initially exempted small carriers from local number portability pooling requirements, acknowledging concerns regarding costs associated with implementation of pooling. In this case, the preservation of universal service funding for small carriers at current support levels is necessary to ensure that these carriers are able to continue serving rural consumers and to accomplish ubiquitous deployment of broadband networks in their service areas.